

Remarks

Claim Amendments

The amendments to claim 65 are supported, e.g., by paragraph [0043] of the publication (US Pat. Pub. 20070178469) and original claim 4. New claim 125 is, e.g., supported by paragraph [0130] of this publication. New claim 126 is, e.g., supported by paragraph [0147] of this publication.

Election/Restriction

Applicants acknowledges under objection the Office's argument regarding SEQ ID NOs:24-27. Without conceding to the veracity of the Office's argument, applicants, in view of the amendments submitted herewith, do not present further arguments at this point.

Claim Objections

Also on page 3, the Office objected to claims 69, 72, 80, 82, 90, 103, 105 and 108 are objected to for containing nonelected invention. Claim 108 is said to depend on non-elected claim 15.

The objected claims have been amended accordingly and claim 108 is indicated as withdrawn.

35 U.S.C. 112, first paragraph: Written Description

Starting on page 3, the Office rejected claims 65, 67-72, 74-91, 101, 102, 103, 105-109, 111-120, 122-124 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Applicants have rewritten the claims including dependent claims that describe "variants or fragments of SEQ ID NO: 25" and well as claims including a reference to a sequence identity of 70% combined with a specific function, which the Office considered to lack a written description (see bottom of page 8 of the Action and following).

Applicants would like to direct the Office to the newly rewritten claim 65 and the claims

dependent thereon in which the reference to variants has been removed. Functional language has also been limited.

The claim, as amended, falls clearly into the purview of a claim for which a written description has been provided according to Example 11 of the "Written Description Training Material" of March 25, 2008.

35 U.S.C. 112, second paragraph: Definiteness

On page 9, the Office rejected claims 85-90, 106, 107, 119 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 85, Office expressed the opinion that the recitation of "A transfected host cell comprising at least one purified and isolated DNA sequence" renders the claim indefinite because it is unclear what the host cell is transfected with. The Office stated that if the host cell is transfected with the DNA sequence of claim 65, then the DNA sequence is no longer "purified or isolated" because it is inside the host cell.

To further the prosecution of this case, applicants have amended the claim to refer to a purified DNA sequence. The Office is referred to para. [0071] of the publication.

Claims 86-90 and 119 are rejected for same reason because they depend on claim 85.

In response, the claim has been brought into independent form incorporating the new limitations of claim 65, without referring to "purified or isolated."

Regarding claim 106, the Office noted that the recitation of "The synthetic MAR sequence" lack antecedent basis. It would be remedial to change the recitation to "A synthetic MAR sequence."

Claim 107 is rejected for same reason because they depend on claim 106.

In response, claim 106 has been amended accordingly.

35 USC §102 Rejection

On page 10, the Office rejected claims 65, 67, 68, 70, 71, 91, 111-113 and 123 under 35 U.S.C. 102(b) as being anticipated by the sequence having accession number AL389920.

The Office in particular expressed the opinion that the sequence having accession number AL389920 comprises bend DNA element comprising at least 33% of the TA and/or AT dinucleotide on a stretch of 100bp, and it comprises at least one binding site for a DNA binding protein (see for example, stretch from bp 89202-89302, which comprises more than 33% or TA dinucleotide). DNA binding protein such as SATB 1 and NMP4 are known to bind polydA and polydT sequences. As such, the sequence having accession number AL389920 is said to have many such potential binding sites. The melting temperature of a DNA molecule depends on the AT and GC content.

Applicants respectfully submit that the new limitations of the claims render this rejection moot.

Applicants earnestly believe that, in view of the amendments submitted herewith, the case is now in condition for allowance and an early issuance of a notice of allowance is respectfully requested.

Request for Rejoinder

Applicants have amended the method claim 42- 45, 93, 97 to 100 and in particular method claims 48, 49, 51, 55 and 110 to encompass all limitations of the product claims, which should now be in condition for allowance. Applicants respectfully request that upon allowance of the product claims, the so amended method claims are considered for rejoinder.

Should any issue remain, the Office is urged to call the undersigned at (301) 657-1282 the number provided below, to address any outstanding issues.

The Commissioner is authorized to charge fee deficiencies and overpayment in connection with this filing to undersign's deposit account 50-3135.

Respectfully submitted,
/Joyce v. Natzmer/
By : Joyce von Natzmer
Registration No. 48,120
Customer No. 46002
Direct Telephone: (301) 657-1282

June 23, 2011

*Pequignot + Myers LLC
200 Madison Ave., Suite 1901
New York, NY 10016*